

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the
2002/2003 New Shipper Reviews of Honey from the People's
Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the 2002/2003 new shipper reviews of honey from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes from the *Preliminary Results*. See *Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Honey From the People's Republic of China*, 69 FR 69350 (November 29, 2004) ("*Preliminary Results*"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in these new shipper reviews:

Changes from the Preliminary Determination

General Issues

- Comment 1: Appropriate Surrogate Value for Honey
- Comment 2: Whether the *Tribune Article* is Tainted by Conflict of Interest
- Comment 3: Calculation of the Financial Ratios
- Comment 4: Clerical Errors
- Comment 5: Recalculation of Constructed Export Price Profit
- Comment 6: Treatment of Non-dumped Sales
- Comment 7: Use of Indian Labor Rate for Valuing Labor
- Comment 8: Use of Regression-Based Wage Rate Information

Background

We published the preliminary results in these new shipper reviews in the *Federal Register* on November 29, 2004. *See Preliminary Results*. The period of review (“POR”) is December 1, 2002 through November 30, 2003. The review covers honey produced and/or exported by four companies: Anhui Honghui Foodstuffs (Group) Co. (“Anhui Honghui”), Eurasia Bee’s Products Co., Ltd. (“Eurasia”), Jiangsu Kanghong Natural Healthfoods Co., Ltd. (“Jiangsu Kanghong”), and Inner Mongolia Youth Trade Development Co., Ltd. (“Inner Mongolia Youth”). We invited parties to comment on our *Preliminary Results*. We received case briefs from Anhui Honghui, Eurasia, Jiangsu Kanghong, and petitioners¹ on December 29, 2004. We received rebuttal briefs from the same parties on January 7, 2005.

DISCUSSION OF THE ISSUES:

Changes from the Preliminary Results

Based on the discussions below, we have made revisions to the data used for the final results. For further details, please see the Anhui Honghui Final Analysis Memorandum; Eurasia Final Analysis Memorandum; Jiangsu Kanghong Final Analysis Memorandum; and Inner Mongolia Youth Final Analysis Memorandum, dated February 17, 2005, which are on file in Import Administration’s Central Records Unit, room B-099 of the Department of Commerce building.

Comment 1: Surrogate Value for Honey

Anhui Honghui, Eurasia, and Jiangsu Kanghong (collectively “respondents”) assert in their case brief that the Department’s selection in its *Preliminary Results* of a surrogate value for raw honey using a December 15, 2003, article entitled “Honey sweet despite price fall,” published by the *Tribune (of India)* (“*Tribune Article*”) is improper and contrary to established precedent. Respondents argue that the *Tribune Article* contains internally inconsistent information. In support of this allegation, respondents note that the *Tribune Article* quotes raw honey prices of between Rupees (“Rs.”) 65 and Rs. 105 per kilogram (“kg”), while also stating that retail honey varies in price between Rs. 60 to Rs. 100 per kg. Further, respondents allege that the *Tribune Article* quotes an additional raw honey price of Rs. 40 per kg. Respondents claim that these inconsistencies contradict the Department’s conclusion in its *Preliminary Results* that there was no evidence contradicting the appropriateness of using the *Tribune Article*.

Further, respondents argue that the *Tribune Article* provides a price for raw honey for exporters from only one region of India, Punjab, and does not contain any information on the price conditions in the country as a whole. Respondents further assert that the *Tribune Article* price cannot be a countrywide price because it does not include prices from “Girijan co-op targets 135-cr turnover” from *Hindu Business Line*, dated April 2003 (“*Girijan Article*”) and “Prospects of Bee Keeping in Rubber Plantations of Kerala” from India Infoline (“*Kerala Article*”), placed on

¹ Petitioners in this case are the American Honey Producers and Sioux Honey Association (collectively “petitioners”).

the record by respondents. Therefore, respondents argue, given its regional nature, the Department cannot base the surrogate value of honey on the prices in this article when it rejected other regional prices.

Respondents also argue that the Department's failure to follow up with initial conversations with the author of the *Tribune Article* to confirm its accuracy renders the *Tribune Article* unusable. Further, citing respondents' May 10, 2004, Surrogate Value Submission ("Respondents' 1st SV Submission") at Exhibit 3, and respondents' December 20, 2004, 2nd Surrogate Value Submission ("Respondents' 2nd SV Submission") at Attachment 1, respondents argue that the prices quoted in the *Tribune Article* are directly contradicted by the raw honey prices from the *Girijan Article* and the *Kerala Article*. Respondents argue that the *Tribune Article* is also contradicted by the Department's own research, noting that the Factors of Production Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated November 19, 2004 ("Prelim FOP Memo") at Attachment 17 includes additional raw honey prices. They note that the North India Beekeeper's Society ("NIBS") data addresses only prices in Northern India, further indicating that the *Tribune Article* relates only to prices in Punjab. Respondents argue that because the Department has previously rejected surrogate value information provided by the *Tribune Article* author because it was region-specific, the Department cannot find the *Tribune Article* reliable when it is clearly region-specific.²

Respondents disagree with the Department's decision in the *Preliminary Results* to reject the *Girijan Article*, which lists a price for raw honey in Andhra Pradesh. Respondents assert that the Department's finding that the *Girijan Article* "may not be representative of the country wide prices in India" (see Prelim FOP Memo at 4) is erroneous because there are no countrywide prices on record. Regarding the *Kerala Article*, respondents argue that the Department's determination that the article is unreliable because of its author's qualifications is unfounded. Respondents argue that the Department has not verified the qualifications of the authors of the articles used in previous reviews, and that the *Kerala Article's* detailed information demonstrates the knowledge of its author. Respondents argue that the Department should, for these final results, value honey using the average price derived from these articles, because no evidence has been cited that calls into question either the *Girijan Article* or the *Kerala Article*.

Respondents argue that the use of the average *Tribune Article* honey value for the final results would be internally inconsistent, would result in Chinese processors being assessed a 112% profit on the honey, and would represent a departure from the Department's practice of obtaining countrywide prices to value inputs. In their rebuttal briefs, respondents created a chart comparing the information on the record with regard to these issues. See Respondents Rebuttal Brief at page 6. Respondents argue that to use the *Tribune Article* average, and reject the *Girijan Article* and *Kerala Article*, would not accurately reflect Chinese prices nor be legally permissible.

² Citing the *Final Results of the New Shipper of the Antidumping Duty Order on Honey from the People's Republic of China*, 68 FR 62053 (October 31, 2003) and accompanying Issues and Decision Memorandum at Comment 3 ("Wuhan Final Results") and the *Final Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China*, 69 FR 25060 (May 5, 2004) and accompanying Issues and Decision Memorandum at Comment 3 ("Honey 1st AR Final Results").

Respondents also assert that should the Department continue to use the *Tribune Article* for the final results, these prices should be averaged with the prices in the *Girijan Article* and *Kerala Article* because the prices in the *Tribune Article* are also from one region, and the resulting average is corroborated by information in the Department's research (see Prelim FOP Memo at Attachment 17). Further, respondents argue that in prior determinations the Department has found these sources reliable.³ Respondents argue that averaging all three articles on the record to derive a raw honey value is consistent with the Department's goal to find the most representative value. Respondents note that the Department has found in the past that "the more broad-based the value the greater likelihood that the value is representative... {and} the more sources involved in deriving the value, the less any possible distortions in any one price will distort the resulting price."⁴ Respondents argue that averaging is appropriate in this case because the Department's correspondence with a Foreign Agriculture Service Officer notes "honey production and marketing in India is highly fragmented... as prices can vary widely from one locality to other," and because the resulting average price is corroborated by the price quoted by the author of the article relied upon in the *Investigation Final*. See Prelim FOP Memo at Attachment 17.

Finally, respondents argue that if the Department continues to rely solely on the *Tribune Article* for valuing honey in the final results, the Department should use an average of the lowest and highest prices quoted in the *Tribune Article*. Respondents note that the lowest price cited in the *Tribune Article* is closer to the prices quoted in the *Girijan Article* and the *Kerala Article*.

Petitioners argue in their case briefs and rebuttal briefs that the *Girijan Article* and *Kerala Article* should not be used to value raw honey for the final results. Petitioners state that the Department has rejected them as inappropriate sources because they have questionable reliability and provide information for only specific regions of India.

Petitioners note that the Department has, in previous honey proceedings, rejected the use of a honey value from a single company in favor of using countrywide prices.⁵ Petitioners argue that the *Girijan Article* is the price for only one company, the Girijan Co-operative Corporation ("GCC"), and therefore represents the price of only one company in a province that produces only a small amount of honey, and further assert that it is the Department's policy to reject single company prices.⁶ Petitioners argue that the GCC information provided in Respondents' 2nd SV Submission is also unreliable as it was not from a publicly available source, is for a single company, and is not representative of India-wide prices. See e.g., *Honey 3rd NSR Final* and

³ See Respondents' Rebuttal Brief at 4.

⁴ See *Certain Preserved Mushrooms from China Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5 ("*Mushrooms 1st Review Final*").

⁵ In support of their position, petitioners cite *Honey from the People's Republic of China: Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review*, 69 FR 64029 (November 3, 2004) ("*Honey 3rd NSR Final*"), *Final Determination of Sales at Less than Fair Value: Honey from the PRC*, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 3 ("*Investigation Final*"), and *Wuhan Final Results* at Comment 3.

⁶ Citing *Honey 3rd NSR Final* and accompanying Factor Valuation Memorandum at 3.

accompanying Issues and Decision Memorandum at 36; *Preliminary Results*. Petitioners argue that because the *Girijan Article* has been deemed unreliable by the Department and has been rejected in two previous determinations, (*see e.g., Honey 3rd NSR Final* and accompanying Factor Valuation Memorandum at 2; *Preliminary Results*), the Department should not accept it in this proceeding without a compelling reason to do so. Further, petitioners note that the honey referenced in the *Girijan Article* appears to be collected in a different manner than honey collected elsewhere in India or in China.

Petitioners also argue that because the *Kerala Article* includes honey prices in a region that produces only 8.4 percent of India's total honey production, it cannot be considered to be representative of the national price of honey in India. Petitioners further argue that the *Kerala Article* states that Kerala has low honey production and that the state of Kerala is "providing training and Beekeeping inputs at subsidized rates to farmers," which would likely undervalue these beekeepers' sales result in prices unrepresentative of nationwide prices, and note that it is not the Department's practice to use subsidized values as surrogate values. Petitioners also note that the *Kerala Article* appears to be a business school report as the Department pointed out in its *Preliminary Results*,⁷ and that respondents have placed on the record no corroborating evidence supporting its veracity.

Petitioners argue that the *Girijan Article* and the *Kerala Article* do not represent prices at the correct level of trade. Petitioners note that the prices in both the *Girijan Article* and the *Kerala Article* appear to be prices paid to honey producers, and not the price paid by honey processors for the honey, and therefore are not at the same level of trade as purchases by the Chinese producers. Petitioners assert therefore that, even if the *Girijan Article* and the *Kerala Article* were reliable and countrywide, of which they are neither, they are still unusable as appropriate surrogate values for raw honey.

Petitioners also argue that, because these articles are not appropriate independent sources for valuing raw honey, they should not be averaged with the *Tribune Article*, as averaging does not alleviate their flaws and the Department's acceptance of the *Tribune Article* as a national price removes the need for averaging. Therefore, petitioners argue, the *Girijan Article* and the *Kerala Article* do not represent reliable surrogate values, and the Department should continue to rely on the *Tribune Article* for the final results.

Petitioners further argue that for the final results the Department should continue to use the *Tribune Article*, but also take into account average monthly changes in honey prices. Petitioners note that the *Tribune Article* states that there was a drop in the value of honey during the period, and the Department should therefore factor in such changes in the honey value. Petitioners propose to calculate an average monthly change in the honey value based on publicly available information from the second new shipper review of honey from the PRC, which includes data from January through May 2002.⁸ Though petitioners acknowledge that the Department has previously rejected this methodology (*see Honey 3rd NSR Final*), they assert that this

⁷ See Prelim FOP Memo.

⁸ See Petitioners May 10, 2004, Surrogate Value Submission ("Petitioners' SV Submission") at Exhibit 2 (citing Memorandum on the Factors of Production Valuation for Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. and Shanghai Xiuwei International Trading Co., Ltd ("2nd NSR Factors Memo").

methodology is a more accurate analysis of the average price during the POR.

Petitioners further argue that the simple average used by the Department in the *Preliminary Results*, or the indexed value that they have proposed, are both corroborated by the raw honey purchased value of Mahabaleshwar Honey Producers Cooperative Society, Ltd. (“MHPC”), the honey processor used to value financial ratios for this proceeding. *See* Petitioners’ December 20, 2004 Surrogate Value Submission (“Petitioners’ 2nd SV Submission”) at Exhibit 1. Petitioners argue that MHPC’s average raw honey cost during the 2003/2004 fiscal year stands in stark contrast to the lower honey values proposed by respondents in this case.

In their rebuttal briefs, respondents argue that petitioners’ arguments with respect to the *Tribune Article* are without merit and should be rejected. Respondents further argue that the *Girijan Article* contains values which are contemporaneous, reliable, publicly available, and as representative of countrywide prices as those in the *Tribune Article*.

Respondents further note that, contrary to petitioners’ claim, the *Girijan Article* is at a more comparable level of trade to the Chinese producers’ raw honey purchases than the *Tribune Article*, or the prices reported by MHPC. Citing the Department’s verification reports and respondents’ questionnaire responses,⁹ respondents argue that Anhui Honghui, Eurasia, and Jiangsu Kanghong each purchase substantial quantities of raw honey directly from beekeepers. Respondents assert that the *Tribune Article* quotes prices in the Punjab market that are higher than prices charged to long-term or bulk customers like Anhui Honghui, Eurasia, and Jiangsu Kanghong. Respondents argue that because of the price spike in honey prices, referenced in the *Tribune Article*, the raw honey value used by the Department generates an artificially high profit of 165 percent, which they conclude is distortive. Respondents also assert that the prices paid by MHPC to its members are not comparable to prices paid by the Chinese processors because MHPC pays its members a “maximum rate” or “higher rate.” Therefore, respondents argue, the *Girijan Article* prices are at the most comparable level of trade.

Respondents also argue that the Department should reject petitioners’ proposed methodology for inflating the *Tribune Article* because it assumes that raw honey prices changed in a consistent, linear manner, and the Department has previously rejected this methodology in the *Honey 3rd NSR Final*.

In their rebuttal briefs, petitioners argue that in the *Preliminary Results* the Department correctly relied on the *Tribune Article* to derive the surrogate value for raw honey, and that respondents’

⁹ *See e.g.*, Memorandum to the File from Salim Bhabhrawala and Anya Naschak: Verification of Sales and Factors of Production Data Submitted by Jiangsu Kanghong Natural Healthfoods Co., Ltd. and its affiliate B. Master, Inc. (August 12, 2004) (“Jiangsu Kanghong Verification Report”); Jiangsu Kanghong Section D response; Memorandum to the File from Jim Nunno and Kristina Boughton: Verification of U.S. Sales and Factors of Production for Respondent Anhui Honghui Foodstuff (Group) Co., Ltd. (August 25, 2004) (“Anhui Honghui Verification Report”); Anhui Honghui Section D response; Memorandum to the File from Jim Nunno and Kristina Boughton: Verification of U.S. Sales and Factors of Production for Respondent Eurasia Bee’s Products Co., Ltd. (August 26, 2004) (“Eurasia Verification Report”); Memorandum to the File from Jim Nunno and Kristina Boughton: Verification of Factors of Production for Respondent Chuzhou Huadi Foodstuffs Co., Ltd. (“Chuzhou Huadi”) (August 26, 2004) (“Chuzhou Huadi Verification Report”) (collectively “Eurasia FOP Verification Reports”); and Eurasia Section D response.

claims that the article is internally inconsistent, limited to the Punjab region, not verified, similar to rejected information, and “tainted by the Department’s involvement,” are unsupported by the record. Petitioners argue that the *Tribune Article* is contemporaneous and from a reputable source, noting that respondents have not disputed the quality of the source and have misread the article in order to conclude that the data are unreliable. Petitioners further note that the prices in the *Tribune Article* are corroborated by the Department’s research, which was placed on the record in the Prelim FOP Memo at Attachment 17. Petitioners agree that the author and one of its sources are from the largest honey-producing region in India, Punjab. However, petitioners argue that the *Tribune Article* clearly provides national Indian prices, as the *Tribune Article* references “Indian beekeepers, especially those in Punjab,” which indicates that the article discusses the national market, while noting that the Punjab region is representative of the Indian market. Petitioners argue that the range of prices relied upon by the Department in the *Preliminary Results* when read in context clearly refer to the price of raw honey for export for all of India. Petitioners claim that respondents have incorrectly assumed that the prices refer only to the Punjab region. Petitioners argue that the Department’s research corroborates the *Tribune Article*. Petitioners cite an email from Sarbjit Dhaliwal to Shireen Pasha contained in Attachment 17 of the Prelim FOP Memo, which they claim demonstrates that the author of the *Tribune Article* was referring to raw honey prices in the Indian market in general.

Petitioners argue that the *Tribune Article* is not internally inconsistent or contradictory in nature, and that the claims by respondents represent a distortion of the data in the article. Petitioners note that the retail prices quoted in the article refer to one city in Northern India, Doraha, which does not supercede the accuracy of the national raw honey prices. Petitioners further argue that respondents misstated the article when they claimed it stated that beekeepers in India sell raw honey for Rs. 40 per kg, when in fact the article states “prices...would never go below Rs. 40 per kg. And even by selling at that price, beekeepers can make money.” Petitioners assert that the Rs. 40 per kg figure was a hypothetical number rather than the actual price at any time during the POR. Petitioners note that the *Tribune Article* quotes a range of raw honey prices over the course of a year and a range of retail prices at one point in the year. Also, petitioners argue that respondents are making an incongruent comparison and therefore their argument does not undermine the credibility of the *Tribune Article*.

Petitioners further argue that the Department’s rejection of an earlier article by the same author is irrelevant to the utility of the *Tribune Article* for these final results. Petitioners note that the earlier article was rejected because it referred only to prices in Northern India, whereas in this case the Department found that the *Tribune Article* referred to India-wide prices, and that authorship by the same individual is irrelevant. Petitioners note that the *Tribune Article* is in an agricultural publication and written by a professional journalist, and that in other contacts with the Department this journalist provided consistent information. Petitioners argue that the Department is required to base its determinations on the weight of substantial record evidence,¹⁰

¹⁰ Citing *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F.3d 978,985 (Fed Cir 1994) (“*Suramerica*”) (quoting *Universal Camera Corp v. NLRB*, 340 U.S. 474, 488 (1951), which states “the substantiality of evidence must take into account whatever in the record fairly detracts from its weight.”

irrespective of the possibility of multiple interpretations of this evidence.¹¹ Petitioners argue that because the Department has considered and rejected the sources provided by respondents in Respondents' 1st SV Submission as unreliable, these sources do not "fairly detract from the weight of the evidence relied upon by the Department." See Petitioners Rebuttal Brief at 15.

Finally, petitioners argue that the use of a base price from the *Tribune Article* to value raw honey is unsupported by record evidence, as respondents' claim that raw honey in India was sold at this price is a misstatement of the *Tribune Article*. Because the *Tribune Article* does not support this claim, petitioners argue that the Department should, for the final results, value raw honey using the *Tribune Article* and petitioners' indexing methodology.

Department's Position:

We agree with petitioners that the Department should continue to value honey using the *Tribune Article* for these final results. We continue to find that the raw honey information in the *Tribune Article* constitutes the best available information with which to value raw honey. We disagree however that an indexing methodology is appropriate, and find that a simple average of the two raw honey prices appearing in the article is the most reflective method of valuing honey during the POR. We explain these findings below.

In valuing factors of production, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. In choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) ("*Garlic from the PRC*") and accompanying Issues and Decision Memorandum at Comment 6. Stated differently, the Department attempts to find the most representative and least distortive market-based value in the surrogate country. See *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. The Department undertakes this analysis on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry. As further noted in *Garlic from the PRC*, the Department prefers, whenever possible, to use countrywide data, and only resorts to company-specific information when countrywide data is not available. In addition, the Department prefers to rely on publicly available data. See *Freshwater Crawfish Tail Meat from the PRC: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001) ("*Crawfish 2001*") and accompanying Issues and Decision Memorandum at Comment 2.

In the *Preliminary Results*, in accordance with its established practice and consistent with previous segments of this honey proceeding, the Department determined that the *Tribune Article* constituted the best information available for purposes of valuing raw honey. We continue to

¹¹ Citing *Suramerica* quoting *Universal Camera Corp.*, 340 U.S. at 487; *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed Cir 1984) ("*Matsushita*"); and *Mitsubishi Heavy Indus., Ltd. v. United States*, 275 F.3d 1056, 1062 (Fed Cir 2001) ("*Mitsubishi*") (citing *Matsushita*, 750 F.2d at 933).

find that the *Tribune Article* is the most appropriate surrogate value source placed on the record in these new shipper reviews. In selecting the *Tribune Article*, the Department determined that the raw honey pricing data in this article is the best information available because: (1) it is from a published, publicly-available source; and (2) it quotes prices that are broad market averages, specific to the raw honey beekeeping industry in India. The Department has consistently found in prior proceedings that the *Tribune of India* is a high quality, reliable, and publicly-available source, and this finding has recently been upheld at the CIT. *See Zhejiang Native Produce & Animal By-Products Import & Export Corp., et al. v. United States*, Consol. Court No. 02-00057, Slip Op. 03-151 (November 21, 2003). With regard to contemporaneity, we note that the *Tribune Article* is contemporaneous to these new shipper reviews because the POR for these new shipper reviews is December 2002 through November 2003, which differs by only one month from the time period of the prices quoted in the article.

With respect to respondents' argument that the *Tribune Article* is unusable because it does not represent complete countrywide data, we note that the Department's decision as to which information constitutes the "best available information" is case specific and turns on the facts of each case. The Department may not always be able to find surrogate values that satisfy each of the preferences listed above. Nevertheless, it is the Department's practice to choose among the available surrogate value options and select that which is the best. *See Crawfish 2001* and accompanying Issues and Decision Memorandum at Comment 2. Thus, in this instance, while the *Tribune Article* does not state conclusively whether it refers to an India-wide price or the price for Punjab alone (as respondents have alleged), the *Tribune Article* clearly refers to the state of Bihar, "Indian beekeepers," and the "Indian market." The Department also notes that the author indicated that he collects raw honey pricing information from a broader area than the state of Punjab. *See* Prelim FOP Memo at Attachment 17. An email from the author included in Attachment 17 demonstrates that the author is familiar with honey production in Punjab, Haryana, Rajasthan, West Bengal, and Bihar. Therefore, based on the information contained in the Prelim FOP Memo at Attachment 17 and the text of the *Tribune Article*, the prices quoted in the *Tribune Article* appear to be from a broad region in India representing a large portion of India's honey production,¹² and the Department finds the *Tribune Article* to be representative of raw honey prices in India.

Respondents have also alleged that the *Tribune Article* contains internal inconsistencies that make it unusable for valuing honey, *i.e.*, prices for raw honey that are higher than the prices listed for retail honey. Specifically, respondents allege that the *Tribune Article* states that the raw honey prices had fallen to Rs. 65 from Rs. 105 per kg during the past year, while retail prices for honey vary from Rs. 60 to Rs. 100 per kg in Doraha, a city in Northern India. Respondents assert that it makes no economic sense for retail (*i.e.*, processed) honey to sell for less than raw honey (*i.e.*, unprocessed), and that this inconsistency therefore renders the article unusable.

We find that respondents' reading of the article is incorrect and the conclusions drawn from this reading are unpersuasive. As noted by petitioners, respondents' arguments are based on a distorted reading of the plain language of the article. In particular, respondents are attempting to selectively compare high and low values of average ranges at any given point in time, which is

¹² Indeed, information on the record indicates that Punjab alone produces approximately 30-percent of India's total honey production.

not useful for purposes of demonstrating conclusively that the prices of raw honey quoted in the article were higher than the prices quoted for retail honey. As noted by petitioners, some prices would be higher or lower than the average, and prices could vary between cities.

Regarding the overall reliability of the *Tribune Article*, we note the prices in the article are loosely corroborated by other information on the record in this proceeding. In the email contained in the Prelim FOP Memo at Attachment 17, for example, the author of the *Tribune Article* quotes raw honey prices of between Rs. 75 and Rs. 135 per kg, which is not inconsistent with the prices quoted in the *Tribune Article*. Further, we note that, although the majority of the prices quoted in the Prelim FOP Memo at Attachment 17 and in the Memorandum to the File from Anya Naschak: Honey Pricing Research, dated November 19, 2004 (“Honey Pricing Memo”) are neither published nor publicly available, these prices more closely corroborate the prices listed in the *Tribune Article* than the other articles on the record.¹³ In addition, we note that the price of raw honey purchased by MHPC (which is located in the state of Maharashtra in central India), as noted in MHPC’s annual reports for the fiscal years 2002/2003 and 2003/2004 (see Prelim FOP Memo at Attachment 13 and Memorandum to the File from Bobby Wong: Factors of Production Valuation Memorandum for the Final Results, dated February 17, 2005 at Attachment 1), is comparable to the average raw honey price in the *Tribune Article*.¹⁴ Therefore, because the information in the *Tribune Article* has been corroborated by other information on the record, including prices from a range of provinces in India, we do not agree with respondents that there are inconsistencies in the *Tribune Article* that require the Department to reverse its opinion in the *Honey 3rd NSR Final* or the *Preliminary Results* for these final results.

The Department has evaluated the other potential sources for valuing raw honey placed on the record of this proceeding. None of these other potential sources is as reliable or otherwise appropriate for surrogate value purposes as the raw honey values appearing in the *Tribune Article*. Specifically, the Girijan Article, while contemporaneous with the POR, is not reliable because: 1) the information is based on data provided by GCC, an Indian cooperative, and represents the experience of only one producer; and 2) the Department has rejected this data in previous segments of this proceeding because it was “not obtained from publicly available sources and may not be representative of country-wide prices in India.” See *Honey 3rd NSR Final* and accompanying Issues and Decision Memorandum at Comment 4. As noted in the Prelim FOP Memo, “a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country.” See 19 CFR 351.408. Rather, the Department prefers to use a publicly available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country. See *Preamble* at 31-32. In the instant review, respondents have placed on the record no new compelling evidence that would indicate that the Department’s conclusions in the preliminary results of this review, and in prior reviews were unfounded.

¹³ In the Prelim FOP Memo, K. Sarangarajan quotes raw honey prices up to Rs. 75 per kg, and Ms. Phookan quotes raw honey prices in India of Rs. 110 per kg. In the Honey Pricing Memo NIBS data indicates prices between Rs. 57 and Rs. 96.3 per kg for raw honey.

¹⁴ The price of raw honey in the MHPC 2002/2003 annual report is approximately Rs. 90 per kg, and the price of raw honey in the MHPC 2003/2004 annual report is approximately Rs. 88.5 per kg.

We also note that Respondents 2nd SV Submission contains information from the GCC's website which contradicts respondents' claim that prices of raw honey during the POR in Girijan were between Rs. 30 to Rs. 45 per kg, an average of Rs. 37.5 per kg. We note that the price listed on GCC's website during the 2002/2003 fiscal year was Rs. 45 per kg and the price during the 2003/2004 fiscal year was Rs. 60 per kg, which is not consistent with the prices quoted in the *Girijan Article*. This contradiction undermines the reliability of the raw honey information appearing in *Girijan Article* for these final results. Therefore, for all the reasons stated above, we find no compelling reason to reverse our decision reached in the 3rd NSR Final Results that the *Girijan Article* is unreliable as a source for valuing raw honey.

Regarding the *Kerala Article*, in the *Preliminary Results*, the Department found it unreliable because it was "an extremely limited pool of data from which to value raw honey for these preliminary results and causes concern as to the representativeness of the prices stated." See Prelim FOP Memo. Specifically, we noted that, the article on its face states that the prices are limited to the Kerala region of India, which accounts for only nine percent of India's honey production. Moreover, we noted that the *Kerala Article* appears to be nothing more than a school paper written by a first-year business student and posted on the "Business School" section of the website with no additional information on the author's qualifications or the sources of his information. Though respondents argue that the Department should accept this article as having equally probative value as the *Tribune Article* with respect to the price of raw honey in India during the POR, respondents did not place any information on the record of this review addressing the Department's concerns regarding the *Kerala Article's* representativeness and origins. While the *Kerala Article* may hold some probative value, the considerations above result in the Department according it less weight than the *Tribune Article*, which was written by a professional journalist and published in a respected Indian publication. Therefore, consistent with the results of the most recent new shipper review, the less-than-fair-value investigation, and with our normal practice, we continue to reject the raw honey data in the *Kerala Article* because it is not representative of countrywide prices in India, and because there is no information on the record in this proceeding regarding the article's reliability.

Respondents argue that if we use the *Tribune Article* in any manner to value raw honey for the final results, we should average the values in the *Tribune Article* with those appearing in the *Girijan Article* and the *Kerala Article*. As noted above, the Department finds that *Tribune Article* is the most reliable information on the record, and adequately represents countrywide prices. Averaging prices from an article that is reliable with company or region -specific and potentially unreliable sources¹⁵ would undermine the integrity of the prices quoted in the *Tribune Article*. Further, the Department previously determined in the *Honey 3rd NSR Final* that such an average was "not reliable." In the instant review we continue to find that the *Girijan Article* is an unreliable source for valuing honey, and that the *Kerala Article* is unreliable. Diluting the efficacy of the *Tribune Article* by averaging its prices with those contained in the *Girijan Article* and the *Kerala Article* would result in less, rather than greater, accuracy in these final results, and, therefore, we decline to do so.

¹⁵ We further note that the *Girijan Article* and the *Kerala Article* are quoting prices from states with very low production quantities, which should not be considered comparable to those of the *Tribune Article* and averaging of the *Tribune Article* price with that of a single producer or single region would improperly bias the average toward the experience of the single producer.

Respondents have further argued that if the Department determines to use only the *Tribune Article* to value raw honey for the final results, the Department should average the prices of Rs. 40 and Rs. 105 per kg, which they claim are the highest and lowest prices quoted in the *Tribune Article* for raw honey. However, respondent's argument is without merit. As discussed above, contrary to respondents' assertion, the reference to Rs. 40 per kg is not an actual price for raw honey, but rather simply a forecast by the author of a potential floor price for raw honey in the indeterminate future. The *Tribune Article* states: "Once China re-enters the market, the prices are bound to fall further. But these would never go below Rs. 40 per kg" (emphasis added). Thus the Rs. 40 per kg is a hypothetical floor price, which could potentially be realized at some point in the future given certain circumstances, not an actual price reflective of the market situation in 2003. Therefore, we find respondents' claims that Rs. 40 per kg is the lowest price quoted in the article without merit.

With respect to petitioners' proposal that the Department should take into account "monthly changes in prices," which assumes that the highest price quoted in the *Tribune Article* was in January 2003 and the lowest price in December 2003, we do not agree that this is an appropriate methodology. We note that this methodology was proposed by petitioners in the *Honey 3rd NSR Final*, and the Department determined at that time that this indexing methodology is neither "necessary nor appropriate" and that there is "no factual support whatsoever for their underlying assumptions that raw honey prices in India decreased from January 2003 to December 2003 in the manner they suggest." See *Honey 3rd NSR Final* and accompanying Issues and Decision Memorandum at Comment 4. For these final results, petitioners have not placed any additional evidence on the record that would call into question the Department's decision in the *Honey 3rd NSR Final*. Therefore we agree with respondents that petitioners' inflation methodology is "unfounded and unsupported by the record," and have not utilized an indexing methodology for purposes of valuing raw honey for these final results.

Finally, with respect to the level of trade arguments raised by the parties, we note that the Department does not have sufficient information available to address either the substance or relevance of these arguments with respect to the articles on the record. There is no clear information on the level of trade reflected in the prices listed in the articles on the record, and note further that some of the respondents claim to purchase raw honey from both beekeepers and honey traders,¹⁶ therefore precluding any meaningful level of trade comparison analysis. Therefore, for these final results, we are not able to attempt to construct a level of trade analysis with respect to the surrogate value for raw honey and respondents' actual purchasing experiences.

In conclusion, no additional information has been placed on the record that would call into question the Department's decision in the *Preliminary Results* that the *Tribune Article* is the best available information for valuing the factor of raw honey. Therefore, we have utilized the *Tribune Article* to value raw honey for these final results, using an average of the lowest (Rs. 65) and highest (Rs. 105) prices quoted in the article for raw honey during the POR, Rs. 85 per kg.

Comment 2: Whether the *Tribune Article* is tainted by a conflict of interest

¹⁶ See Eurasia's Section D Questionnaire Response dated March 31, 2004, at page 6.

Respondents argue that the apparent conflict of interest related to the *Tribune Article* constitutes sufficient reason for the Department to reject its use as the sole source of the surrogate value for raw honey. Citing *NEC Corp. v. U.S. Department of Commerce*, 151 F.3d 1361 (1988) (“*NEC Corp*”), respondents argue that the Department violated respondents’ right to an impartial decision-maker in this proceeding because the raw honey surrogate value appears to have been generated by the Department. Respondents further posit that because the Department did not put a memorandum to the file documenting its conversation with the author, and because the petitioners proposed that the *Tribune Article* constitutes the only source to value raw honey, there is an appearance of impropriety. Respondents assert that the Department abandoned its role as an impartial arbiter by relying solely on this information without attempting to contact the authors of the other sources. Respondents assert that the Department has either been remanded by the Court of International Trade (“CIT”) when it failed to remain impartial, or has rejected surrogate data if it was not sufficiently insulated from conflicts of interest¹⁷ and should therefore use an article other than the *Tribune Article* to value raw honey for these final results.

Petitioners argue that respondents’ allegation that there is a conflict of interest with respect to the *Tribune Article* is unsupported by the record. Petitioners note that under section 773(c)(1) of the Tariff Act of 1930, as amended (“the Act”), the Department is required to seek surrogate value information of its own accord, and they argue that the Prelim FOP Memo at Attachment 17 demonstrates that the Department was researching reliable information on the value of raw honey from all available sources in India. Citing 19 CFR 351.104(a)(i), petitioners also argue that the Department has a statutory requirement to develop a record on which to base its determinations, and that the respondents have not argued to the contrary. Petitioners argue that there is no evidence to support respondents’ claims that the Department in any way attempted to influence either the content or the accuracy of the *Tribune Article*. Further, petitioners note that the Department has no legal authority over the *Tribune (of India)*, and contact with the publication and the Department’s failure to document the conversation with the journalist do not taint the information published. Petitioners argue that there is no requirement that the Department document contact between a Department employee and a source of information. *See* 19 U.S.C. 1677f(a)(3). Further, petitioners argue that there is no information on the record that indicates any person involved in the *Preliminary Results* or making a recommendation with respect to these final results had any *ex parte* contact. Petitioners argue that there is nothing to support respondents’ claims of impropriety in the record of these contacts. *See* Prelim FOP Memo at Attachment 17.

Department’s Position:

We agree with petitioners that respondents’ claims are unsupported by record evidence. With regard to respondents’ claims that the Department has abandoned its role as an impartial arbiter by contacting the author of an article, proposed as a source of the surrogate value information, we find that respondents’ assertion is entirely without merit.

¹⁷ *See e.g., F.A.G. Italy S.p.A. v. United States*, 110 F. Supp. 2d 1055 (August 4, 2000) (“*Italy SpA*”) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China*, 69 FR 70997 (December 8, 2004) (“*PRC Shrimp Final Determination*”) and accompanying Issues and Decision Memorandum (November 29, 2004) (“*PRC Shrimp Memo*”) at Comment 1.

At the *Preliminary Results*, the Department placed on the record of this review the entirety of all research conducted by the Department at any time during this POR or subsequent to that time period with respect to its extensive efforts to obtain raw honey surrogate values. See e.g., Prelim FOP Memo at Attachment 17 and Honey Pricing Memo. As the information contained in the Prelim FOP Memo at Attachment 17 clearly indicates, the Department contacted a number of sources in a good-faith attempt to find an appropriate surrogate value for raw honey, in accordance with section 773(c)(1) of the Act.

Respondents' claim that the Department created or otherwise "originated" the *Tribune Article* is similarly without merit. In this regard, we note that the email exchange in the Prelim FOP Memo at Attachment 17 between the author of the *Tribune Article* and an employee of the Department reflects an effort to collect additional information concerning the author's prior article from March 2001, placed on the record of a prior review by respondents, and clearly not an attempt to compel the author to issue a new article on the honey industry in India. Respondents cite the *PRC Shrimp Final Determination* in support of their claim that the Department should reject the *Tribune Article*. That determination however does not support respondents' argument. The Department, consistent with past practice,¹⁸ concluded in that case that it was not appropriate to use a surrogate value contained in an unpublished study conducted on behalf of respondents. In the instant review, we note that the *Tribune Article* is a publicly available article in a published journal, rather than a private study conducted on behalf of a party to this proceeding.

Therefore for these final results, the Department is continuing to value the raw honey input using the *Tribune Article*.

Comment 3: Calculation of the Financial Ratios

Respondents argue that the Department should average the ratios of the 2002/2003 and 2003/2004 MHPC financial statements to cover the entire POR because the 2002/2003 MHPC Annual Report covers only the first four months of the POR, and both are equally reliable. Respondents note that the Department has used an average of reliable financial statements in prior determinations to calculate financial ratios.¹⁹ Respondents argue that using the combined ratios for the final results would not be a departure from previous Department practice and would accurately reflect the significant change apparent in MHPC's financial performance, consistent with the Department's desire to capture the "surrogate company's experience as a whole."²⁰ Respondents also argue that the Department should use only the 2002/2003 MHPC annual report

¹⁸ See also, *Writing Instrument Manufacturers Assoc. v. United States*, 984 F. Supp 629, 635-39 ("Writing Instruments")(CIT 1997).

¹⁹ Citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decisions Memorandum at Comment 14, 21 ("*Color TVs Final Determination*"); and *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410 (March 5, 2004) ("*Mushrooms Prelim*"), and accompanying Factors Valuation For the Preliminary Results at 11

²⁰ See *Honey Ist AR Final Results* and accompanying Issues and Decision Memorandum at 19.

for Anhui Honghui because all of Anhui Honghui's shipments fall within the months covered by the 2002/2003 financial statements.

Respondents also argue that the Department improperly included "honey sales commissions," in the calculation of the selling, general, and administrative expenses ("SG&A") ratio. Respondents note that in market economy cases the Department adjusts both constructed export price ("CEP") or export price ("EP"), and constructed value ("CV") for commissions to avoid double counting.²¹ Respondents argue that the Department is required to apply the same methodology in non-market economy ("NME") proceedings based on the CIT's findings in *Hebei Metals & Minerals Import & Export Corp. v. United States*, 2003 WL 1615597 (CIT 2004) ("*Hebei*") and *Holmes Products Corp. v. United States*, 795 F. Supp. 1205 (CIT 1992) ("*Holmes*"). Respondents note that the Department has deducted expenses from the surrogate SG&A value in prior proceedings.²² Respondents further argue that the CIT has found that double-counting is "impermissible" and the deduction of distinguishable expenses is required. In the instant case, respondents argue that because the Department is deducting sales commissions from U.S. price for two respondents, the inclusion of honey sale commissions in the calculation of the surrogate SG&A ratio constitutes double counting. Respondents argue that the Department should also deduct sales commissions from net sales in its calculation of the profit ratio if commissions are deducted from SG&A, and failure to do so would result in a distortion of the profit ratio. Respondents also argue that the Department should treat MHPC's expenses for jars and corks as direct materials consistent with the Department's practice,²³ because they claim that these are an integral part of the marketing of retail honey.

Petitioners argue that the Department should revise its calculation of financial ratios to use the more contemporaneous 2003/2004 MHPC financial statements because it is more contemporaneous than the 2002/2003 financial statements, with the POR. Petitioners note that the 2003/2004 financial statements cover a greater portion of the POR than those used in the *Preliminary Results*. Petitioners also argue that the Department should, for the final results, classify "service charges" as part of factory overhead, rather than materials, labor, and energy ("MLE") because petitioners claim that these are expenses paid to outside parties. Petitioners also argue that "land rent" is more properly classified as other income and should be removed from the calculation of the SG&A ratio.

Respondents argue in their rebuttal brief that using only the 2003/2004 financial statements would be contrary to the Department's practice, noting that the Department has averaged multiple financial statements in other proceedings. See *Color TVs Final Determination and Mushrooms Prelim*. Further, respondents argue that the Department prefers to calculate

²¹ Citing Antidumping Policy Manual, Chapter 8, Normal Value, at 35–43 (commissions) and 55–66 (constructed value)

²² Citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842-01, 1998 WL 791481 (November 17, 1998) at Comment 18 ("*1997 TRBs*"), where the Department deducted transportation expenses because they were already accounted for in the normal value calculation.

²³ See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 3, 2003) and the accompanying Issues and Decision Memorandum at Comment 9 ("*Persulfates*").

“surrogate percentage averages...rather than to use the financial data of a sole Indian...producer,”²⁴ and to accurately reflect the “surrogate company’s experience as a whole.” See *Honey 1st AR Final Results* and accompanying Issues and Decision Memorandum at 19. Respondents argue that because both the 2002/2003 and 2003/2004 financial statements are equally reliable, and the performance of MHPC is significantly different in the two years, the Department should use an average of the two years to reflect the financial experience of the whole POR, and to avoid potentially distortive data.

Respondents also argue that the Department should reject petitioners’ proposed reclassification of “service charges” as overhead, noting that petitioners failed to provide support for their request. Respondents argue, that consistent with the Department’s practice, the Department should continue to include “service charges” as part of MLE.²⁵

In their rebuttal brief, petitioners argue that to combine MHPC’s 2002/2003 and 2003/2004 financial statements would be a departure from the Department’s policy to use data from a single period, noting that the *Mushrooms Prelim* involved the averaging of multiple surrogate companies, and not multiple time periods of the same company. Citing the Department’s Antidumping Questionnaire, petitioners note that in market economy cases the Department’s standard practice is to use financial statements “for the fiscal year that most closely corresponds to the POI.”²⁶ Petitioners argue that because the 2003/2004 financial statements are the most contemporaneous, they are the most appropriate source for valuing surrogate financial ratios for the final results for all respondents, noting that the Department has never used different financial ratios for different respondents.

Regarding honey sales commissions, petitioners argue that the Department should reject respondents’ request to exclude these expenses from the Department’s calculations of SG&A, noting that in *1997 TRBs* the Department categorized these expenses as SG&A expenses irrespective of whether the PRC producers had commissioned sales staff, and the Department has a long-standing practice of not adjusting surrogate producer’s ratios in an attempt to reflect the actual experiences of the NME exporter/producer. See e.g., *1997 TRBs* at 63852-3; *Color TVs Final Determination* and accompanying Issues and Decision Memorandum at 73. Petitioners further argue that because the calculations in a market economy case and a non-market economy case are inherently different, it is inappropriate to make comparable adjustments, contrary to respondents’ claims. Petitioners argue that because commissions are selling expenses they should properly be considered part of SG&A, and that no double-counting would occur even for those respondents that reported commissions.

Finally, petitioners argue that jars and corks should not be included in the calculation of MLE because these expenses are not included in the direct material factor calculation, as none of the respondents reported these packing expenses, and SG&A and profit ratios are calculated

²⁴ Citing *Brake Rotors From the People’s Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 64 FR 73007 (Dec. 29, 1999) (“*Brake Rotors*”).

²⁵ See *Honey 3rd NSR Final: Factors Valuation for the Final Results* at Attachment 9 (Oct. 24, 2003).

²⁶ See USDOC Antidumping Duty Questionnaire at D-15, available at <http://www.ia.ita.doc.gov/questionnaires/q-review-sec-d-032003.doc>.

exclusive of packing.

Department's Position

The Department agrees with petitioners that the 2003/2004 MHPC financial statements are the better source for valuing the surrogate financial ratios in this review. Under the NME methodology, when deemed reliable, it is the Department's established practice to select the most contemporaneous surrogate values to value the factors-of-production and financial ratios. *See Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887 (January 27, 2004) ("THFA") at 3892. As discussed below, we find that the 2003/2004 MHPC financial statements are the best available information for valuing financial ratios (*i.e.*, factory overhead, SG&A, and profit) based on their quality, specificity, and contemporaneity.²⁷

In the *Preliminary Results* of the instant review, the Department used the 2002/2003 MHPC financial statements for purposes of calculating financial ratios for the POR. However, for these final results, the Department has determined that the 2003/2004 MHPC financial statements, which were placed timely on the record by parties are more contemporaneous with the POR, because they cover eight months of the POR, whereas the 2002/2003 financial statements cover only four months of the POR. With respect to respondents' claims that the Department has averaged financial data from different years, contrary to these assertions, we note that in *Color TVs* and in *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) ("*Mushrooms Final*"), the Department chose the most contemporaneous single time period of multiple companies with which to value financial ratios. *See Color TVs* at 67–68 and *Mushrooms Final*. Further, we note that in the final results of the first administrative review, the Department also had on the record of the proceeding two financial statements from MHPC, which covered different portions of the POR. The Department determined that the financial statements, which covered the largest portion of the POR, were the more contemporaneous. *See Honey 1st AR Final Results* and accompanying Issues and Decision Memorandum at Comment 5. In addition, were the Department to average the two financial statements on the record of this review, we would be deriving financial ratios from twelve months outside the POR in addition to the twelve months inside the POR. Using respondents' proposed methodology would therefore create a less representative method for deriving financial ratios than simply using the most contemporaneous financial statements. Therefore, in accordance with section 773(c)(1)(B) of the Act, for these final results the Department has applied financial ratios from the 2003/2004 MHPC financial statements to all respondents, including Anhui Honghui.

With respect to respondents' assertions that the Department should exclude honey sales commissions from the calculation of the surrogate SG&A ratio, the Department disagrees. In *Honey 3rd NSR Final Results*, the Department determined, consistent with *TRBs*, that because

²⁷ While no party to these reviews questioned the reliability of MHPC as a source for valuing financial ratios, we note that consistent with prior proceedings, we find the MHPC financial statements to be reliable for purposes of valuing the surrogate financial ratios for the final results. *See e.g., Honey 1st AR Final Results; Wuhan Final Results; Honey 3rd NSR Final Results.*

sales commissions are standard selling expenses, the commission expenses should be included in the surrogate SG&A calculation regardless of whether the respondent incurred commissions on its sales of subject merchandise. The Department found that whether or not a PRC producer had sales commissions is irrelevant to the Department's surrogate SG&A calculation, because the Department does not tailor surrogate financial ratios to match the particular circumstances in the NME country. *See e.g., 1997 TRBs* and accompanying Issue and Decision Memorandum at Comments 17 and 18; *Honey 3rd NSR Final Results* and accompanying Issues and Decision Memorandum at Comment 5. Therefore, consistent with the Department's practice, we will continue to include honey sales commissions in the surrogate SG&A calculation for the final results.

The Department also disagrees with respondents' claims that jar and cork expenses should be included as a direct material component of the MLE denominator. The Department notes that jars and corks each appear separately in both the "Sales" and "Purchase" columns of the 2003/2004 MHPC surrogate financial statement as "Stock" and "Purchase" items, separate from the "Honey Collection" and "Honey Sale" line items. *See MHPC 49th Annual Report* at page 15, as translated in Respondents' 2nd SV Submission at Exhibit 1. Respondents point to no evidence in the 2003/2004 MHPC financial statements that these items should be included as direct materials, nor to any evidence as to how these items are purchased and sold. Therefore, it appears that jars and corks were just as likely to have been purchased and resold as a secondary product as opposed to a component in the manufacturing of honey. If we were to presume that they are direct material inputs or a packaging cost would therefore be inherently speculative and likely to result in less accurate results. Therefore, in the calculation of the surrogate profit ratio, the Department has continued to deduct only those packing expenses identified in the line item "packing" in the MHPC annual report consistent with previous segments of this review, and has not adjusted the MLE denominator to include the expenses for jars and corks. *See Honey 3rd NSR Final Results* and accompanying Factor Valuation Memorandum.

With respect to petitioners' arguments that expenses for "service charges," reported in MHPC's 2002-2003 financial statements, should be treated as factory overhead expenses rather than direct manufacturing costs, the Department finds that there is no evidence on the record to support the assertion that these expenses are "expense paid to outside parties." Therefore, the Department will continue to treat service charges as direct manufacturing costs, consistent with the treatment of such expenses in previous segments of this proceeding. *See e.g., Honey 3rd NSR Final Results* and accompanying Issues and Decision Memorandum at Comment 5; *Wuhan Final Results* and accompanying Issues and Decision Memorandum at Comment 3; *Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 67832 (December 4, 2003); *Preliminary Results of First Administrative Antidumping Duty Review: Honey from the People's Republic of China*, 68 FR 69988 (December 16, 2003).

We also note that "land rent" and "room rent" do not appear in the MHPC 2003/2004 financial statements, and therefore are not included in our revised calculation of the SG&A ratio.

Comment 4: Clerical Errors

Respondents claim that the Department made two clerical errors with regard to Anhui Honghui:

1) the Department applied marine insurance expenses to certain Anhui Honghui shipments, for which Anhui Honghui did not incur this expense; and 2) the Department should not have applied the marine insurance rate to gross unit price, rather to entered value.

Respondents further claim that the Department made two “clerical errors” with regard to Eurasia: 1) the Department used incorrect usage rates for labor and raw honey; and 2) the Department applied the marine insurance rate, rather than “insurable value,” which is the delivered duty paid (“DDP”) sale price minus post-shipment expenses. Respondents suggest that the Department should calculate insurable value by subtracting international freight, brokerage and U.S. duty expenses from gross unit price.

Petitioners respond that the Department made no clerical errors with regard to Eurasia. Petitioners point out that the Department mentioned in its Eurasia verification report²⁸ that the Department made adjustments to the usage rates calculated for labor, and the Department properly used these adjusted rates to value labor in the Eurasia margin program.

Further, petitioners contend that the only difference between the honey input cost calculated by the Department and the honey input cost respondents claim should be used, is a truncation of the values within the calculation. Petitioners claim that the Department’s methodology of adding the precise values before rounding is a more correct methodology than rounding the values for raw honey and raw honey freight first and then adding the rounded numbers, as the respondent suggests. Finally, petitioners state that the Department should continue to apply the marine insurance rate to gross unit price for Eurasia because, in this case, gross unit price is the most representative value for “total shipment value,” according to Eurasia’s own submitted information.²⁹

Department’s Position:

As an initial matter, we do not agree that any of the alleged errors noted by respondents constitute “clerical errors” within the meaning of the Department’s regulations. As noted at 19 CFR 351.224(f), the Department’s regulations define a ministerial error as “an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial” (emphasis added). The errors pointed out by respondents were not unintentional and, as such, are more properly described as methodological in nature. However, we agree with respondents, in part, and petitioners, in part, that the Department should make certain modifications to the margin calculation as discussed below.

With regard to Anhui Honghui, we agree that marine insurance was deducted from certain shipments which the Department found at verification that Anhui Honghui did not incur marine insurance (though Anhui Honghui had reported these expenses in its sales database³⁰). Therefore, we will not deduct marine insurance costs on such shipments for these final results.

²⁸ See Chuzhou Huadi Verification Report at page 9.

²⁹ See Petitioners’ Rebuttal Brief at page 31.

³⁰ See Hong Hui USA Verification Report at page 12.

With regard to Eurasia, we will continue to calculate the honey input as we did in the *Preliminary Results*. We note that the error alleged is not actually an error but rather due to rounding differences. The Department's calculation adds full values and then rounds the final value, while the respondent would prefer that the Department round the values within the calculation. As for the labor value issue, we note that at verification Eurasia provided us with a corrected labor worksheet supporting the underlying data we used to calculate the revised labor figures in our verification report.³¹ Eurasia has provided no indication why this corrected worksheet should not be considered. Because at verification Eurasia agreed that this change was necessary to correct the underlying data for calculating labor, and even facilitated the change by providing the corrected worksheet, we will continue to value labor as we did in the *Preliminary Results*.

Regarding marine insurance, we again note that the error alleged by respondents is not in fact a "clerical" error. However, based on an analysis of our methodology, we have determined for the final results that the Department will apply marine insurance costs to entered value for all respondents in this review, including Eurasia, where we have entered value information and where respondents have incurred marine insurance costs. As the Department stated in *Windshields*, "The Department determines that entered value more closely represents the shipping value of the goods."³² Since Eurasia has provided entered value information, we will use this information to apply marine insurance costs, rather than calculating "insurable value."

Comment 5: Recalculation of Constructed Export Price Profit

Respondents state that the method in which the Department calculated CEP profit for Anhui Honghui and Jiangsu Kanghong – *i.e.*, dividing each company's U.S. affiliate's gross profits by gross receipts – is a departure from the Department's normal practice of calculating CEP profit in NME cases based on a profit ratio derived from the surrogate producers' books and records. The respondents state that this policy was formalized in the Department's Policy Bulletin 97.1 (September 1997).

Respondents contend that it would be "unlawful" for the Department to ignore the methodology in its policy bulletin because it would not meet the requirements of section 772(d)(3) of the Act. However, if the Department decides to abandon its normal practice and continue with its *Preliminary Results* methodology for calculating CEP profit, respondents argue that the Department should reduce Anhui Honghui's CEP profit ratio by its U.S. affiliate's selling expenses and Jiangsu Kanghong's CEP profit ratio by its U.S. affiliate's selling expenses.

Petitioners agree that the Department departed from normal practice in using Anhui Honghui and Jiangsu Kanghong's U.S. affiliates' tax returns to calculate the CEP profit ratio. However, they argue that where market economy evidence is available as to the actual performance of a U.S. affiliate and there is no indication that the respondent may have had the opportunity to shift profit between the affiliate and the parent, then use of the U.S. affiliate's data is the most accurate method of calculating the CEP profit ratio. They argue that the Department should

31 See page 13 of Exhibit 10 and page 9 of the Chuzhou Huadi Verification Report.

32 See *Windshields* and accompanying Issues and Decision Memorandum at Comment 13.

therefore continue to calculate CEP profit based on the U.S. affiliate's financial statements for the final results of this review.

Petitioners also contend that the Department should not, at face value, accept respondents' requests that the Department reduce Anhui Honghui's CEP profit ratio by its U.S. affiliate's selling expenses and Jiangsu Kanghong's CEP profit ratio by its U.S. affiliate's selling expenses. If the Department chooses to recalculate the CEP profit ratio for Anhui Honghui and Jiangsu Kanghong, based on respondents' case brief suggestions, then the Department should also recalculate each company's indirect selling expenses so that the two figures are consistent.

Department's Position:

We agree with respondents. It is the Department's practice to calculate CEP profit based on the surrogate producer's profit ratio, and we have recalculated CEP profit in this manner for the final results in accordance with Policy Bulletin 97.1, which states that "Since it is inappropriate to use financial report data of an NME respondent in calculating CEP profit, the calculation must be based on income and expense information provided by one or more surrogate producer(s). The CEP profit deduction in such cases must be based on the U.S. selling expense data and a profit ratio derived by utilizing the financial data of the surrogate producer(s)."

Comment 6: Treatment of Non-dumped Sales

Respondents argue that the World Trade Organization ("WTO") Appellate Body determined that the United States' methodology of zeroing positive differences between U.S. price and normal value in antidumping investigations is unlawful under the Antidumping Agreement. Citing *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (August 11, 2004), at paragraph 108 (*U.S.- Softwood Lumber*), they contend that in zeroing margins in the instant review, "the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement in determining the existence of margins."

Respondents further argue that this WTO decision is applicable to administrative reviews, and that the Department, in its imputation of Congressional intent that zeroing combats "targeted dumping," has misinterpreted the statute. Further, respondents argue that though the Department has claimed discretion to set to zero positive margins based on "spot" or "targeted" dumping,³³ the interpretation of Congressional intent is no longer necessary because the statute is no longer silent.³⁴ Respondents note that the Department has not relied on the legislative intent of Congress in recent determinations, citing the *Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (Nov. 17, 2004) and the accompanying Issues and Decision Memorandum at Comment 8 ("*Bedroom Furniture*").

³³ Citing *Bowe Passat Reinigungs-Und Waschereitechnik GMBH v. United States*, 926 F. Supp. 1138, 1149 (CIT 1996) ("*Bowe Passat*") and *Timkin v. United States*, 354 F.3d 1334, 1343 (Fed Cir 2004) ("*Timkin 2004*")

³⁴ See e.g. the special exception added in the Uruguay Round ("URAA") in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Trade Agreements at 843; section 77A(d)(1)(B) of the Act; 19 CFR 351.414(f).

Respondents argue that, as a result of WTO panel decisions against the U.S. practice of zeroing and because the Department's past rationale that it is meant to address targeted dumping is without support, U.S. law should be interpreted in accordance with the "law of nations,"³⁵ and the Department should no longer engage in zeroing in its margin calculation. Further, respondents argue that if the Department were to rely on a determination of targeted dumping as a reason for zeroing in this case, petitioners made no such allegation within the relevant deadline. *See* 19 CFR 351.301(d)(5). Therefore, respondents argue that the Department cannot rely on targeted dumping as a basis for zeroing for these final results.

Petitioners respond that the only way that the Department's interpretation of zeroing could be wrong is if there was an expression of Congressional intent to the contrary. However, the Court of Appeals for the Federal Circuit³⁶ has specifically ruled that no such expression of Congressional intent exists, and the SAA makes no mention of the Department's zeroing methodology. Therefore, petitioners claim, the Department's practice of zeroing margins continues to be a reasonable application of the statute as determined in *Bowe Passat* and reaffirmed in *Timken 2004*, and represents a fair comparison of normal value and U.S. prices according to a "plain reading"³⁷ of section 771(35) of the Act.

Petitioners also contend that the WTO appellate decision regarding *U.S.- Softwood Lumber* is confined to the unique facts of the *U.S.- Softwood Lumber* case, and has limited, if any, precedential value. In particular, petitioners argue that decision has no relevance to the practice of zeroing in administrative reviews. Further, the Department has rationales beyond targeted dumping, according to petitioners, that cause it to implement the zeroing practice, mainly the "notion that no sales made at less than fair value, *i.e.*, dumped, should be negated by non-dumped sales."³⁸ Recent Department decisions, petitioners point out, do not rely on targeted dumping as a rationale for zeroing. *See Bedroom Furniture* and accompanying Issue and Decision Memorandum at Comment 8.

Finally, petitioners contend, the Department cannot reinterpret its policy on zeroing without invoking the procedures required by 19 U.S.C. § 3533, which requires consultations between appropriate congressional committees, the agency involved, the U.S. Trade Representative, and time for public comment before the regulation or practice at issue before the dispute settlement panel or Appellate Body can be rescinded, amended, or otherwise modified. Therefore, the Department must continue to practice zeroing margins in this particular case.

Department's Position:

We disagree with respondents. As we have discussed in prior cases, our margin calculation methodology is consistent with our statutory obligations under the Act. *See, e.g., Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR

³⁵ *See Murray v. Charming Betsy*, 66 U.S. 64 (1804) ("*Murray*").

³⁶ Citing *Timken* : "{W}e find that the statute does not directly speak to the issue of negative-value dumping margins..."

³⁷ *See* Petitioners' Rebuttal Brief at 40.

³⁸ *See* Id at 45-46.

75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 4; *Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 69 FR 61649 (October 20, 2004), and accompanying Issues and Decision Memorandum at Comment 7; and *Notice of Final Results of Antidumping Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004), and accompanying Issues and Decision Memorandum at Comment 8.

As petitioners have argued, the CAFC has affirmed the Department's methodology as a reasonable interpretation of the statute. See *Timken 2004* at 1342 - 34 (covering an antidumping administrative review of tapered roller bearings from Japan). More recently, the CAFC again affirmed the Department's methodology as consistent with the statute with respect to an antidumping investigation in *Corus Staal BV and Corus Staal USA Inc. v. Department of Commerce et. al.*, 04-1107 (CAFC 2005) (*Corus Staal*), issued January 21, 2005, at 8-9, *publication pending*. The Court in *Corus Staal* held that the Department's interpretation of section {771(35) of the Act} to permit this methodology was permissible whether it be in the context of an administrative review or investigation. See *id.* at 7. Finally, we note that the WTO decision relied on by respondents was specific to antidumping investigations and does not address the conduct of administrative reviews. Thus, for the reasons stated herein, the Department has continued to calculate the cash deposit rates in this review in accordance with its standard methodology.

Comment 7: Use of Indian Labor Rate for Valuing Labor

Respondents argue that the Department should use the publicly available countrywide Indian wage rates as the surrogate value for labor. They argue that the surrogate value calculation based on the regression analysis incorporating the 2001 wage rates and the 2002 gross national income ("GNI") figures is inaccurate.

Respondents argue that the regression analysis does not comply with the statutes' directive to derive wages using comparable surrogate countries because it includes high wage countries, citing 19 U.S.C. §1677b(c)(4)(A). Furthermore, respondents argue that the Department's calculation of wage rates is flawed as it uses China's GNI to estimate wage rates. Respondents maintain that "price levels within China," underlie the basis of the PRC's GNI, price levels that the Department has previously determined unreliable. Respondents argue that these inconsistencies can be avoided by using the wage rate of India, which has been recognized by the Department as the "primary surrogate country."

Petitioners did not comment on this issue.

Department's Position:

We disagree with respondents that the Department should use India's average wage rate of \$0.15/hour as a surrogate value for Chinese labor because use of such data would be contrary to the Department's regulations. 19 CFR 351.408(c)(3) directs the Department to value labor in cases involving NME countries as follows:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

In accordance with 19 CFR 351.408(c)(3), the Department has calculated the regression-based expected wage rate for the PRC and has used this calculated regression-based expected wage rate for the PRC in our calculations of the final margins in this proceeding.

Comment 8: Use of Regression-Based Wage Rate Information

Respondents argue that the Department should utilize the 2001/2002 wage rate data as posted to the Department's website on October 6, 2004, which included all market economy countries with available International Labour Organization ("ILO") data, and that yielded a wage rate of \$0.72/hour. Respondents argue that despite the existence, accessibility, and contemporaneity of the data, the Department arbitrarily deselected information from the wage rate calculation after the public hearing on October 20, 2004, regarding *Bedroom Furniture*,³⁹ and used this revised information in its calculations.

Further, respondents argue that in conducting the regression analysis, the Department has not articulated a rationale for mixing data from different years in the Department's calculations. Respondents also claim that the Department has neither explained why it has disregarded available and contemporaneous ILO data, nor why the Department subsequently suppressed previously published data. Respondents assert that the exclusion of select countries is inconsistent with the Department's position that "the selection of countries was based upon the availability of wage data as reported" from various international sources.⁴⁰

More generally, respondents claim that the wage calculation is contradictory to the Department's position that "more data is better than less data,"⁴¹ and that the Department had no economic basis for calculating the worldwide average wage rate based on "cherry-picked" countries. Respondents argue that the Department had no basis for excluding available country data and that the Department is not entitled to be arbitrary under 19 USC 1516a(b)(1)(A). Respondents maintain that the Department is obligated to calculate dumping margins as accurately as possible.⁴² Respondents conclude that the Department should not change its current policy; rather they suggested that the Department should simply follow the regression methodology that it originally prescribed, but without selectively excluding subsets of information.

In their reply brief, petitioners argue that respondents failed to provide material support for their allegations that the Department should use \$0.72/hour as the wage rate. Petitioners argue that

³⁹ See Transcript of Public Hearing at 252.

⁴⁰ See <http://ia.ita.doc.gov/wages/02wages/02wages.html>

⁴¹ See Comments on Final Rules, 62 FR 27367 (May 19, 1997).

⁴² Citing *Lasko Metal Prods. Inc.* ("Lasko"), 43 F.3d at 1446, Quoting *Rhone Poulenc, Inc. v. United States*, 899, F.2d 1185, 1991 (Fed. Cir. 1991); and *NTN Bearing Corp. v. United States* ("NTN"), 74 F.3d 1204, 1208 (Fed. Cir. 1995).

while respondents refer to the Department's prior published data, they did not provide this information on the record of this proceeding.

Petitioners contend that the respondents' argument that the Department "cobbled" data together in its wage rate calculation is baseless, and assert that the Department used appropriate values from the 2001 wage rates and GNP data. They argue that the 56 countries that the Department utilized in its regression analysis were sufficient to provide a statistically significant sample, when only 53 countries were necessary to produce results with a 95% confidence interval. Furthermore, petitioners argue that in conducting statistical sampling, in accordance with legitimate statistical practices, the Department may identify outliers and anomalies in the sample that may lead to bias in the results. They argue that this selectivity would not amount to "cherry-picking," but rather is a necessary process in the Department's analysis.

Department's Position:

We disagree with respondents that the Department should base its regression-based wage rate surrogate value on \$0.72/hour. As noted in Comment 7 above, for purposes of these final results, the Department has continued to calculate the regression-based expected wage rate for the PRC in accordance with 19 CFR 351.408(c)(3) and has used this rate to value labor in our margin calculations. This wage rate is listed on the Import Administration web site under "Expected Wages of Selected NME Countries." See <http://ia.ita.doc.gov/wages/index.html>. This is the same PRC regression-based wage rate used in *Bedroom Furniture* and *PRC Shrimp Final Determination*.

However, as discussed in both *Bedroom Furniture* and *PRC Shrimp Final*, the Department is reviewing its regression-based wage rate calculation. Re-estimating the relationship between GNI and wage rates using a regression analysis on a significantly different basket of countries would be a significant change in the dataset. Moreover, to determine an accurate construction of this new dataset and to conduct a new regression analysis would require more time than is currently available in this review. Finally, such a change should be subject to comment from the general public, and it would be inappropriate to restrict this public-comment process to the context of the instant review. Consequently, the Department will invite comments from the general public on this matter in a proceeding separate from the current review.

For these final results, the Department used the 2004-revised expected wage rate of \$0.93/hour as a surrogate for Chinese labor costs, in accordance with the regulations and long-standing practice.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date